

SENATE COMMITTEE OF REFERENCE REPORT

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Chairman of Committee

March 20, 2013  
Date

Committee on Business, Labor, & Technology.

After consideration on the merits, the Committee recommends the following:

SB13-158 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, page 3, strike lines 8 through 23 and substitute the  
2 following:

3 "SECTION 2. In Colorado Revised Statutes, 24-4-103, **amend**  
4 (2), (2.5), (4) (a), and (8.1) (b) (V); and **repeal** (4.5) as follows:

5 **24-4-103. Rule-making - procedure - definitions - repeal.**

6 (2) When rule-making is contemplated, public announcement thereof  
7 may be made at such time and in such manner as the agency determines.  
8 The agency shall establish a representative group of participants with an  
9 interest in the subject of the rule-making to submit views or otherwise  
10 participate informally in conferences on the proposals under  
11 consideration, INCLUDING PROVIDING INPUT ON THE ELEMENTS OF A  
12 REGULATORY ANALYSIS OF PROPOSED RULES AS PROVIDED IN SUBSECTION  
13 (2.5) OF THIS SECTION, or to participate in the public rule-making  
14 proceedings on the proposed rules. In establishing the representative  
15 group, the agency shall make diligent attempts to solicit input from  
16 representatives of each of the various stakeholder interests that may be  
17 affected positively or negatively by the proposed rules. If the agency  
18 convenes a representative group prior to issuing a notice of proposed  
19 rule-making as provided in paragraph (a) of subsection (3) of this section,  
20 the agency shall add those persons who participated in the representative  
21 group to the list of persons who receive notification of proposed  
22 rule-making as provided in paragraph (b) of subsection (3) of this section.

23 (2.5) (a) At the time of filing a notice of proposed rule-making

1 with the secretary of state as the secretary may require, an agency shall  
2 submit a draft of the proposed rule or the proposed amendment to an  
3 existing rule and INCLUDE a statement, in plain language, concerning the  
4 subject matter or purpose of the proposed rule or amendment AND, IN A  
5 SEPARATE CLEARLY MARKED SECTION, A REGULATORY ANALYSIS TO THE  
6 SECRETARY OF STATE AND to the office of the executive director in the  
7 department of regulatory agencies. ~~The executive director, or his or her~~  
8 ~~designee, may determine if the proposed rule or amendment may have a~~  
9 ~~negative impact on economic competitiveness or on small business in~~  
10 ~~Colorado. If the executive director, or his or her designee, determines that~~  
11 ~~the proposed rule or amendment may have such negative impact, he or~~  
12 ~~she may direct the submitting agency to perform a cost-benefit analysis~~  
13 ~~of the rule or amendment. If the executive director, or his or her designee,~~  
14 ~~makes such a request, it shall be made at least twenty days before the date~~  
15 ~~of the hearing on the rule or amendment. The agency receiving such~~  
16 ~~request shall complete a cost-benefit analysis at least five days before the~~  
17 ~~hearing on the rule or amendment, shall make the analysis available to the~~  
18 ~~public, and shall submit a copy to the executive director or his or her~~  
19 ~~designee. Failure to complete a requested cost-benefit analysis pursuant~~  
20 ~~to this subsection (2.5) shall preclude the adoption of such rule or~~  
21 ~~amendment. Such cost-benefit~~ THE REGULATORY analysis shall include  
22 TO THE EXTENT PRACTICABLE the following:

23 (I) ~~The reason for the rule or amendment~~ A DESCRIPTION OF THE  
24 CLASSES OF PERSONS WHO WILL BE AFFECTED BY THE PROPOSED RULE OR  
25 AMENDMENT, INCLUDING CLASSES THAT WILL BEAR THE COSTS OF AND  
26 CLASSES THAT WILL BENEFIT FROM THE PROPOSED RULE OR AMENDMENT;

27 (II) The anticipated, PROBABLE economic benefits of the rule or  
28 amendment; ~~which shall include economic growth, the creation of new~~  
29 ~~jobs, and increased economic competitiveness;~~

30 (III) The anticipated, PROBABLE costs of the rule or amendment,  
31 which shall include the direct costs to the government to administer the  
32 rule or amendment and the direct and indirect costs to SMALL business and  
33 other entities required to comply with the rule or amendment;

34 (IV) A COMPARISON OF THE ANTICIPATED, PROBABLE COSTS AND  
35 BENEFITS OF THE PROPOSED RULE TO THE ANTICIPATED PROBABLE COSTS  
36 AND BENEFITS OF INACTION;

37 ~~(IV)~~ (V) Any ANTICIPATED, PROBABLE adverse effects on the  
38 economy, consumers, private markets, small businesses, job creation, and  
39 economic competitiveness; ~~and~~

40 (VI) A DETERMINATION OF WHETHER THERE ARE LESS COSTLY  
41 METHODS OR LESS INTRUSIVE METHODS FOR ACHIEVING THE PURPOSE OF

1 THE PROPOSED RULE OR AMENDMENT;  
2 ~~(V)~~ (VII) ~~At least two~~ A DESCRIPTION OF ANY alternatives to the  
3 proposed rule or amendment that ~~can be identified by the submitting~~  
4 ~~WERE SERIOUSLY CONSIDERED BY THE~~ agency, ~~or a member of the public,~~  
5 including the costs and benefits of pursuing each of the alternatives  
6 identified, AND THE REASONS WHY THEY WERE REJECTED IN FAVOR OF THE  
7 PROPOSED RULE OR AMENDMENT;  
8 ~~(b)~~ (VIII) ~~The executive director, or his or her designee, shall~~  
9 ~~study the cost-benefit analysis and may urge~~ A DESCRIPTION OF HOW the  
10 agency ~~to revise~~ DRAFTED the rule or amendment to eliminate or reduce  
11 ~~the~~ any ANTICIPATED, PROBABLE negative economic ~~impact.~~ ~~The~~  
12 ~~executive director, or his or her designee, may inform the public about the~~  
13 ~~negative impact of the proposed rule or the proposed amendment to an~~  
14 ~~existing rule~~ IMPACTS.  
15 (b) AFTER RECEIVING A REGULATORY ANALYSIS FROM A  
16 RULE-MAKING AGENCY, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT  
17 OF REGULATORY AGENCIES SHALL POST THE REGULATORY ANALYSIS ON  
18 THE DEPARTMENT OF REGULATORY AGENCIES' WEB SITE.  
19 ~~(c)~~ Any proprietary information provided to the department of  
20 revenue by a business or trade association for the purpose of preparing a  
21 cost-benefit analysis shall be confidential.  
22 ~~(d)~~ (c) If the agency has made a good faith effort to comply with  
23 the requirements of ~~paragraph (a)~~ of this subsection (2.5), the rule or  
24 amendment shall not be invalidated on the ground that the contents of the  
25 ~~cost-benefit~~ REGULATORY analysis are insufficient or inaccurate.  
26 ~~(e)~~ (d) This subsection (2.5) shall not apply to: ~~orders, licenses,~~  
27 ~~permits, adjudication, or rules affecting the direct reimbursement of~~  
28 ~~vendors or providers with state funds.~~  
29 (I) RULES OR AMENDMENTS PROMULGATED BY THE DEPARTMENT  
30 OF REVENUE REGARDING THE ADMINISTRATION OF ANY TAX WHICH IS  
31 WITHIN THE AUTHORITY OF SAID DEPARTMENT;  
32 (II) RULES OR AMENDMENTS REGARDING ANNUAL CHANGES TO  
33 HUNTING AND FISHING REGULATIONS;  
34 (III) RULES OR AMENDMENTS THAT IMPLEMENT SPECIFIC  
35 SUBSTANTIVE RULES OR AMENDMENT REQUIREMENTS OF LEGISLATION  
36 ENACTED BY THE GENERAL ASSEMBLY;  
37 (IV) RULES OR AMENDMENTS THAT IMPLEMENT MANDATES OR  
38 REQUIREMENTS OF FEDERAL LAW OR FEDERAL RULES.  
39 (e) NOTWITHSTANDING PARAGRAPH (d) OF THIS SUBSECTION (2.5)  
40 AND REGARDING ANY PROPOSED RULE OR AMENDMENT, AN AGENCY MAY,  
41 AT ANY TIME PRIOR TO THE PROMULGATION OF A RULE OR AMENDMENT

1 NOT OTHERWISE SUBJECT TO A REGULATORY ANALYSIS, CONDUCT A  
2 REGULATORY ANALYSIS, OR A VARIATION OF A REGULATORY ANALYSIS, OF  
3 A PROPOSED RULE OF AMENDMENT, PROVIDING ADEQUATE TIME FOR  
4 PUBLIC INPUT.

5 (f) NOTWITHSTANDING ANY PROVISION OF THIS SUBSECTION (2.5)  
6 AND WITHIN TEN DAYS AFTER THE FILING OF THE NOTICE OF PROPOSED  
7 RULE-MAKING, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF  
8 REGULATORY AGENCIES MAY DIRECT AN AGENCY TO PERFORM A  
9 REGULATORY ANALYSIS, OR CONDUCT A MORE THOROUGH REGULATORY  
10 COST-BENEFIT ANALYSIS, WHEREUPON THE AGENCY SHALL SUSPEND THE  
11 RULE-MAKING TIME FRAMES TO CONDUCT SUCH ANALYSIS AND TO  
12 INCLUDE ADEQUATE TIME FOR PUBLIC INPUT, WHEN:

13 (I) THE EXECUTIVE DIRECTOR HAS CONSULTED WITH THE AGENCY  
14 ON THE NEED FOR SUCH AN ANALYSIS AND THE EXECUTIVE DIRECTOR  
15 DETERMINES THAT SUCH AN ANALYSIS IS WARRANTED; OR

16 (II) ANY PERSON SUBMITS TO THE EXECUTIVE DIRECTOR WITHIN  
17 FIVE DAYS AFTER THE FILING OF THE NOTICE OF PROPOSED RULE-MAKING  
18 A REQUEST THAT THE AGENCY CONDUCT A REGULATORY ANALYSIS, OR A  
19 MORE THOROUGH REGULATORY COST-BENEFIT ANALYSIS, AND THE  
20 EXECUTIVE DIRECTOR, AFTER CONSULTATION WITH THE AGENCY,  
21 DETERMINES THAT SUCH AN ANALYSIS IS WARRANTED.

22 (g) NOTWITHSTANDING THE REQUIREMENTS OF THIS SUBSECTION  
23 (2.5), FOR ANY RULE THAT HAS BEEN EXEMPTED PURSUANT TO PARAGRAPH  
24 (d) OF THIS SUBSECTION (2.5) FROM THE REQUIREMENT OF PREPARING A  
25 REGULATORY ANALYSIS, THE AGENCY SHALL PREPARE A REGULATORY  
26 ANALYSIS UPON THE REQUEST OF ANY PERSON MADE AT LEAST FIFTEEN  
27 DAYS PRIOR TO THE RULE-MAKING HEARING.

28 (f) (h) (I) This subsection (2.5) is repealed, effective July 1, 2013  
29 2018.

30 (II) Prior to such repeal, the provisions regarding the preparation  
31 of a cost-benefit analysis pursuant to this subsection (2.5) shall be  
32 reviewed as provided for in section 24-34-104, C.R.S.

33 (4) (a) At the place and time stated in the notice, the agency shall  
34 hold a public hearing at which it shall afford interested persons an  
35 opportunity to submit written data, views, or arguments and to present the  
36 same orally unless the agency deems it unnecessary. The agency shall  
37 consider all such submissions. Any proposed rule or revised proposed rule  
38 by an agency which is to be considered at the public hearing, together  
39 with a proposed statement of basis, specific statutory authority, purpose,  
40 and the regulatory analysis, IF ONE WAS PREPARED AS required in  
41 subsection ~~(4.5)~~ (2.5) of this section, OR THE REGULATORY COST-BENEFIT

1 ANALYSIS, IF ONE WAS PREPARED AS REQUIRED IN SUBSECTION (2.5) OF  
2 THIS SECTION, shall be made available to any person at least five days  
3 prior to said hearing. The rules promulgated by the agency shall be based  
4 on the record, which shall consist of proposed rules, evidence, exhibits,  
5 and other matters presented or considered, matters officially noticed,  
6 rulings on exceptions, any findings of fact and conclusions of law  
7 proposed by any party, and any written comments or briefs filed.

8 ~~(4.5) (a) Upon request of any person, at least fifteen days prior to~~  
9 ~~the hearing, the agency shall issue a regulatory analysis of a proposed~~  
10 ~~rule. The regulatory analysis shall contain:~~

11 ~~(I) A description of the classes of persons who will be affected by~~  
12 ~~the proposed rule, including classes that will bear the costs of the~~  
13 ~~proposed rule and classes that will benefit from the proposed rule;~~

14 ~~(II) To the extent practicable, a description of the probable~~  
15 ~~quantitative and qualitative impact of the proposed rule, economic or~~  
16 ~~otherwise, upon affected classes of persons;~~

17 ~~(III) The probable costs to the agency and to any other agency of~~  
18 ~~the implementation and enforcement of the proposed rule and any~~  
19 ~~anticipated effect on state revenues;~~

20 ~~(IV) A comparison of the probable costs and benefits of the~~  
21 ~~proposed rule to the probable costs and benefits of inaction;~~

22 ~~(V) A determination of whether there are less costly methods or~~  
23 ~~less intrusive methods for achieving the purpose of the proposed rule; and~~

24 ~~(VI) A description of any alternative methods for achieving the~~  
25 ~~purpose of the proposed rule that were seriously considered by the agency~~  
26 ~~and the reasons why they were rejected in favor of the proposed rule.~~

27 ~~(b) Each regulatory analysis shall include quantification of the~~  
28 ~~data to the extent practicable and shall take account of both short-term~~  
29 ~~and long-term consequences.~~

30 ~~(c) The regulatory analysis shall be available to the public at least~~  
31 ~~five days prior to the rule-making hearing.~~

32 ~~(d) If the agency has made a good faith effort to comply with the~~  
33 ~~requirements of paragraphs (a) to (c) of this subsection (4.5), the rule~~  
34 ~~shall not be invalidated on the ground that the contents of the regulatory~~  
35 ~~analysis are insufficient or inaccurate.~~

36 ~~(e) Nothing in paragraphs (a) to (c) of this subsection (4.5) shall~~  
37 ~~limit an agency's discretionary authority to adopt or amend rules.~~

38 ~~(f) The provisions of this subsection (4.5) shall not apply to rules~~  
39 ~~and regulations promulgated by the department of revenue regarding the~~  
40 ~~administration of any tax which is within the authority of said department.~~

41 (8.1) (b) The agency rule-making record shall contain:

1 (V) A copy of any regulatory analysis or ANY REGULATORY  
2 cost-benefit analysis prepared for the proceeding upon which the rule was  
3 based, if applicable, and any formal statement made to the agency  
4 promulgating the rule by the executive director of the department of  
5 regulatory agencies regarding such cost-benefit analysis;"

6 Strike pages 4 through 8.

7 Page 9, strike lines 1 through 14 and substitute:

8 "SECTION 3. In Colorado Revised Statutes, 24-34-104, **add**  
9 (49.5) (e); and **repeal** (44) (o) as follows:"

10 Page 9, after line 20, insert:

11 "(49.5) The following agencies, functions, or both, shall terminate  
12 on September 1, 2018:

13 (e) THE REQUIREMENTS AND PROCEDURES REGARDING THE  
14 PREPARATION OF A REGULATORY ANALYSIS OR A REGULATORY  
COST-BENEFIT ANALYSIS IN ACCORDANCE WITH SECTION 24-4-103 (2.5);".

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